

Decision **PROPOSED DECISION OF ALJ DIVISION** (Mailed 8/6/2013)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to determine the impact on public benefits associated with the expiration of ratepayer charges pursuant to Public Utilities Code Section 399.8.

Rulemaking 11-10-003
(Filed October 6, 2011)

**DECISION AWARDING INTERVENOR COMPENSATION TO THE GREEN
POWER INSTITUTE FOR SUBSTANTIAL CONTRIBUTION TO
DECISIONS 11-12-035 AND 12-05-037**

Claimant: The Green Power Institute (GPI)	For contributions to Decision (D.) 11-12-035 and D.12-05-037
Claimed: \$41,687	Awarded: \$35,950 (reduced 14%)
Assigned Commissioner: Michael R. Peevey	Assigned ALJ: ALJ Division

PART I: PROCEDURAL ISSUES

A. Brief Description of Decision:	Decisions D.11-12-035 and D.12-05-037 are the Phase 1 and 2 Decisions establishing the Electric Program Investment Charge (EPIC) program. The Phase 1 Decision authorizes the collection of special-purpose ratepayer funds during 2012, while the Phase 2 Decision establishes the parameters for the program, and extends its life-in-service out to 2020.
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B. Claimant must satisfy intervenor compensation requirements set forth in Public Utilities Code §§ 1801-1812:

	Claimant	CPUC Verified
Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference:	GPI failed to provide this date	June 2, 2011
2. Date NOI Filed:	July 2, 2011	Correct
3. Was the NOI timely filed?		Yes

Showing of customer or customer-related status (§ 1802(b)):		
4. Based on ALJ ruling issued in proceeding number:	Rulemaking (R.) 11-03-012	Correct
5. Date of ALJ ruling:	Dec. 1, 2011	Correct
6. Based on another CPUC determination (specify):		
7. Has the Claimant demonstrated customer or customer-related status?		Yes
Showing of “significant financial hardship” (§ 1802(g)):		
8. Based on ALJ ruling issued in proceeding number:	R.11-03-012	On Dec. 1, 2011, in this proceeding, the ALJ ruled that GPI met the financial hardship condition pursuant to § 1802(g) through a rebuttable presumption of eligibility because the Commission found GPI had met this requirement in another proceeding within one year of the commencement of this proceeding (ALJ Ruling dated Mar. 6, 2011 in R.10-05-006.
9. Date of ALJ ruling:	Dec. 1, 2011	Correct
10. Has the Claimant demonstrated significant financial hardship?		Yes
Timely request for compensation (§ 1804(c)):		
11. Identify Final Decision:	D.12-05-037	Correct
12. Date of Issuance of Final Order or Decision:	May 31, 2012	Correct
13. File date of compensation request:	July 24, 2012	Correct
14. Was the request for compensation timely?		Yes

PART II: SUBSTANTIAL CONTRIBUTION**A. Claimant's description of its claimed contribution to the final decision:**

Contribution	Specific References to Claimant's Presentations and to Decision	Showing Accepted by CPUC
<p>Continue Collecting Funds at Current Levels</p> <p>The initial threshold issue that had to be decided in this Proceeding was whether the Commission had the authority to create a benefits program in light of the failure of the legislature to reauthorize the PGC program during the 2011 Legislative session.</p> <p>The GPI was a strong advocate for continued funding of a benefits program for renewables and R&D at the same level of funding as was used for the PGC program the previous year, without allowing for a gap in collections. We favored a long-term commitment to a benefits program for renewables. The Phase 1 Decision continues funding for renewables and R&D without interruption.</p>	<p>GPI's <i>Comments on the OIR</i>, 10/20/11, at 1 – 2.</p> <p>Joint Biomass Parties <i>Comments on the PD</i>, 12/5/11, at 2.</p> <p>The Phase 1 Decision establishes a renewables and R&D benefits program on an interim basis, at previous PGC funding levels. See D.11-12-035, at 10 – 11, 24 – 27, Finding of Fact no. 7, Conclusion of Law no. 3, and Order no. 2.</p>	Yes
<p>Biomass Benefits at Risk</p> <p>One of the crucial questions that was being asked in regards to whether there was a policy imperative for establishing a benefits program under PUC auspices was whether failure to do so would put valuable benefits at risk. We warned that the market for biomass energy was not vibrant, that the recent contract amendments for biomass facilities did not completely solve their problems, and that the waste-disposal benefits of biomass energy production that the ERF had been securing were indeed at risk. The Phase 1 Decision affirms that biomass provides special benefits that are at risk.</p>	<p>GPI's <i>Comments on the OIR</i>, 10/20/11, at 2 – 3.</p> <p>The Phase 1 Decision affirms that the PGC-funded ERF program provides valuable societal benefits. See D.11-12-035, at 24 – 27, Finding of Fact no. 5.</p>	Yes

<p>Discontinue the ERF</p> <p>Although the ERF was enormously successful during the period that it was in effect, we believed that it had outlived its usefulness in its original form, and we recommended that it be discontinued. The Phase 2 Decision discontinues the ERF program.</p>	<p>Joint Biomass Parties <i>Comments on the OIR</i>, 10/20/11, at 5 – 7.</p> <p>Joint Biomass Parties <i>Comments on the EPIC Staff Proposal</i>, 03/7/11, at 4.</p> <p>The Phase 2 Decision declines to fund any market support activities, including ERF. See D.12-05-037, at 48 – 49, Finding of Fact no. 23.</p>	<p>Yes</p>
<p>Create Targeted Biomass-Fuels Program</p> <p>In view of the fact that EPIC was created in order to secure benefits that previously had been provided by the PGC program, including the benefits of full operations of the state's fleet of biomass plants, we proposed a new targeted biomass-fuels program for inclusion in EPIC. Although our proposed program was ultimately not adopted in the Phase 2 Decision, we made a Substantial Contribution to the Decision by enriching the record upon which the Decision was made, ensuring that the best possible case was made for our proposed program.</p> <p>In making the case for a targeted biomass-fuels program, we addressed the following major issues that were in dispute in the Proceeding:</p> <ul style="list-style-type: none"> • The marketplace for biomass power • The significance of the amended PPAs • New vs. existing facilities <p>We pointed out that the current marketplace for biomass power was very challenging. No greenfield plants were under active development in the state, and many existing generators are deciding to reduce or cease operations of their facilities. Even the PPA amendments may not be enough to keep facilities operating at full capacity. Finally,</p>	<p>Joint Biomass Parties <i>Comments on the OIR</i>, 10/20/11, at 2 – 5, 7 – 8, 9 – 11.</p> <p>Joint Biomass Parties <i>Reply on the OIR</i>, 10/26/11, at 2 – 3.</p> <p>Joint Biomass Parties <i>Comments on the EPIC Staff Proposal</i>, 03/7/11, entire document.</p> <p>Joint Biomass Parties <i>Reply on the EPIC Staff Proposal</i>, 03/16/11, entire document.</p> <p>Joint Biomass Parties <i>Comments on the Phase 2 PD</i>, 05/14/11, at 7 – 10.</p> <p>The Phase 2 Decision extols the virtues of biomass, and the ancillary benefits it provides (D.12-05-037, at 53, Finding of Fact no. 24, Conclusion of Law no. 18). Unfortunately, it declines to include the targeted biomass-fuels program in the EPIC program.</p>	<p>Although this issue was slightly germane to this proceeding, GPIs hours spent advocating for adoption of this program were excessive. The targeted biomass-fuels program was not a great fit for the overall program being designed, and was rejected by the Commission. We disallow 50% of Morris's 2011 work (4.2 hrs.) and 50% of Morris's 2012 work (4.9 hrs.) on this issue. See Part III, Section D.</p>

we pointed out that making a distinction between existing and new generators risks substituting the new, coal-to-biomass conversions that are under development for existing facilities, rather than seeing the overall market expand.		
<p>Beneficiaries and Alternate Funding Sources</p> <p>Some parties argued that there is a disconnect between the beneficiaries of the waste-disposal benefits of biomass, and ratepayers. We pointed out that while the connection might not be perfect, it was more than strong enough to eliminate this as a concern with respect to whether a targeted biomass-fuel program should be eligible for EPIC funds.</p> <p>One of the suggestions made in opposition to our proposal was that alternative funding sources might be tapped to provide compensation for the special benefits of biomass energy production. We pointed out that while that might sound attractive, more than a decade's effort to do just that had yielded zero results. On the other hand, we pointed out that a parallel proceeding, R.11-03-012, was a potential source of the funds that would be needed for the proposed program, and the Phase 2 Decision affirms the desirability of this alternative.</p>	<p>GPI's <i>Comments on the OIR</i>, 10/20/11, at 4.</p> <p>Joint Biomass Parties <i>Comments on the EPIC Staff Proposal</i>, 03/7/11, at 12.</p> <p>Joint Biomass Parties <i>Comments on the Phase 2 PD</i>, 05/14/11, at 2 – 6.</p> <p>Joint Biomass Parties <i>Reply on the Phase 2 PD</i>, 05/21/11, at 3.</p> <p>The Phase 2 Decision states: “it might be wise for the state to consider a more diverse funding source beyond electricity ratepayers, such as the revenues anticipated from the cap and trade program of AB 32 ... (D.12-05-037, at 54)”</p>	Yes

B. Duplication of Effort (§§ 1801.3(f) & 1802.5):

	Claimant	CPUC Verified
a. Was the Division of Ratepayer Advocates (DRA) a party to the proceeding?	Yes	Correct
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Correct
c. If so, provide name of other parties: SDG&E, PG&E, SCE, DRA, TURN, UCS, NRDC, Nature Conservancy, Sierra Club, Vote Solar Initiative, SEIA, California Farm Bureau, and Pacific Forest Trust.		Correct

<p>d. Claimant's explanation as to how it coordinated with DRA and other parties to avoid duplication or how claimant's participation supplemented, complemented, or contributed to that of another party:</p> <p>This proceeding covered a wide variety of topics related to the benefits of renewable energy, and how to secure them. The GPI focused its participation on its primary area of expertise, the benefits of biomass energy, and the biomass energy marketplace in California.</p> <p>The GPI coordinated its efforts in this proceeding with other parties in order to avoid duplication of effort, and added significantly to the outcome of the Commission's deliberations. In particular, we had discussions with UCS and other members of the joint environmental parties, and with other parties representing biomass-related interests, in developing our Comments on the EPIC staff proposal. Some amount of duplication has occurred in this proceeding on all sides of contentious issues, but Green Power avoided duplication to the extent possible, and tried to minimize it where it was unavoidable.</p>	<p>GPI's joint filings and timesheet entries support its claim of coordination with other parties to avoid duplication of effort.</p>
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PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§§ 1801 & 1806):

a. Claimant's explanation as to how the cost of Claimant's participation bore a reasonable relationship with benefits realized through claimant's participation	CPUC Verified
<p>GPI made significant contributions to D.11-12-035 and D.12-05-037 by providing a series of Commission filings on the various topics under consideration in this proceeding and covered by this claim. GPI's work was technical in nature, including documenting the history of the RPS program in California, and the performance of biomass within the program.</p>	<p>California has a long history of clean energy. Policy leadership and Research, Development and Deployment (RD&D) continues to be a core component of its success. While it is difficult to quantify the benefits of an improved RD&D Plan, there are important direct benefits that will accrue to Californians from improved technology that is expected to reduce the amount of energy Californians use. The benefits associated with bringing new technologies to market and integrating them into efficiency programs for customers will create jobs, save customers money on</p>

<p>CPUC Comments:</p> <p>D.98-04-059 at 33-34 states that “participation must be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through such participation.” To demonstrate productivity, a customer must try to assign a reasonable dollar value to the benefits of its participation. Even benefits thought of as intangible may be so “monetized through appropriate proxies.” At 54, the decision states that “the customer should present its views and the Commission should evaluate them, and judge whether the participation is productive.” In cases where it is difficult to monetize intangible benefits, “just the same, an effort should be made. At a minimum, when the benefits are intangible, the customer should present information sufficient to justify a Commission finding that the overall benefits of a customer’s participation will exceed a customer’s costs.”</p> <p>GPI failed to provide information sufficient enough to justify such a finding. Instead of reducing the claim, we elect instead to conduct our own independent review and conclude that, after reductions made to this claim, the remaining hours were productive. We caution GPI that future claims lacking a sufficient showing of productivity may be rejected or dramatically reduced.</p>	<p>their energy bill, and help California achieve its aggressive environmental and energy policy mandates. After the reductions we make to GPI’s claim, we find the remainder of GPI’s hours and costs to have been productive and likely to result in benefits to customers that will exceed the cost of GPI’s award.</p>												
<p>b. Reasonableness of Hours Claimed.</p>	<p>CPUC Verified</p>												
<p>The hours claimed herein in are reasonable given the scope of the proceeding, and according to GPI should be fully compensated.</p>	<p>After the reductions we make to this claim, the remaining hours and costs are reasonable and worthy of compensation.</p>												
<p>c. Allocation of Hours by Issue</p>	<p>CPUC Verified</p>												
<p>GPI allocates its time by major issue as follows:</p> <table> <tr> <td>1. Continue collecting funds at current levels</td><td>20%</td></tr> <tr> <td>2. Biomass benefits at risk</td><td>7½%</td></tr> <tr> <td>3. Current state of the biomass market in California</td><td>30%</td></tr> <tr> <td>4. Discontinue the ERF</td><td>5%</td></tr> <tr> <td>5. Create a targeted biomass-fuels program</td><td>25%</td></tr> <tr> <td>6. Beneficiaries of biomass benefits, and alternative funding 12½% sources</td><td></td></tr> </table>	1. Continue collecting funds at current levels	20%	2. Biomass benefits at risk	7½%	3. Current state of the biomass market in California	30%	4. Discontinue the ERF	5%	5. Create a targeted biomass-fuels program	25%	6. Beneficiaries of biomass benefits, and alternative funding 12½% sources		<p>GPI has properly allocated its time by major issue as required by Rule 17.4.¹</p>
1. Continue collecting funds at current levels	20%												
2. Biomass benefits at risk	7½%												
3. Current state of the biomass market in California	30%												
4. Discontinue the ERF	5%												
5. Create a targeted biomass-fuels program	25%												
6. Beneficiaries of biomass benefits, and alternative funding 12½% sources													

¹ See D.98-04-059 and D.85-08-012.

B. Specific Claim*:

CLAIMED						CPUC AWARD		
ATTORNEY, EXPERT, AND ADVOCATE FEES								
Item	Year	Hours	Rate \$	Rate Rationale	Total \$	Hours	Rate \$	Total \$
G. Morris	2011	77.0	240	D.13-05-009	18,480	64.0	240	15,360
G. Morris	2012	79.5	240	D.13-05-009	19,080	72.3	245	17,714
V.Whiddon ²	2011	9.0	70	D.13-05-009	630	9.0	70	630
V.Whiddon	2012	28.5	70	D.13-05-009	1,995	17.2	70	1,204
Subtotal: \$40,185						Subtotal: \$34,908		
INTERVENOR COMPENSATION CLAIM PREPARATION **								
Item	Year	Hours	Rate \$	Rate Rationale	Total \$	Hours	Rate	Total \$
G. Morris	2012	12.0	120	½ D.13-05-009 rate	1,440	8.0	122.50	980
Subtotal: \$1,440						Subtotal: \$980		
COSTS								
Item					Amount \$	Amount \$		
Postage					62	62		
Subtotal: \$62						Subtotal: \$62		
TOTAL REQUEST: \$41,687						TOTAL AWARD: \$35,950 ³		
<p>*We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Claimant's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.</p> <p>**Reasonable Claim preparation time is compensated at ½ of preparer's normal hourly rate.</p>								

² Although Whiddon is listed as a consultant by GPI, her work here more closely resembles that of a paralegal. Whiddon's timesheets almost exclusively include work on "analyzing and summarizing the comments of other parties."

³ Rounded to nearest dollar increment.

C. CPUC Comments and Disallowances:

Comments
<p>GPI's request for compensation is the highest among 6 intervenors in this proceeding who also requested compensation for claimed contributions to D.11-12-035 and D.12-05-037. The average compensation request among these claims is \$21,770.</p> <p>We applaud GPI's joint filing of documents with other parties where its interests were similar.</p>
Internal Duplication of Effort
<p>GPI requests 5 hrs of Morris' 2011 hrs to "review other parties' comments on the PD and begin reply." This is duplicative of the compensated efforts of Whiddon.</p>
Excessive Hours
<p>In our discussion on page 5,⁴ we found the hours GPI spent on the issue of "creating a targeted bio-mass fuels program" to be excessive. We reduce the hours that Morris spent on this issue by 50%; 2011 hours (-4.2 hrs.) and 2012 hours (- 4.9 hrs.).⁵</p> <p>GPI requests 3.5 hrs for Morris' attendance at the pre-hearing conference on 10/27/11. We reduce the 2011 hours of Morris by 2.25 hrs, equal to the same amount of time requested by other intervenors in attendance at the same event (-1.25 hrs.).</p> <p>GPI requests 5 hrs of Morris' 2011 hours to "read, review and analyze" the Proposed Decision on Phase I. We find 2.5 hrs sufficient to complete this task and equal to the time logged by other intervenors to complete this same work. To meet our expectations on the reasonableness of hours, we reduce Morris' 2011 hrs by 2.5 hrs.</p> <p>GPI requests 6.5 hrs of Morris' 2012 hours to "review ruling and staff proposal on Phase 2 and review and analyze EPIC staff proposal. We find this time to be excessive. Other intervenors performed this same task in 4.25 hrs. Under these circumstances, the disallowance of 2.25 hrs for this task is reasonable.</p> <p>GPI requests 13.5 hrs in 2012 for Whiddon to "analyze and summarize Comments on the Staff Proposal." And 9.0 hrs in 2012 for Whiddon to "analyze and summarize parties' comments and reply comments on the Proposed Decision." We reduce this time by 50%, reflecting a more reasonable amount of time to receive compensations for these tasks. (-11.25 hrs.)</p> <p>Given the lack of complexity of GPI's request for compensation, 8 hrs of Morris' 2012 time should have been more than sufficient to have completed this task. We approve this allotment of time and disallow the remaining 4 hrs for excessiveness.</p>

⁴ See Part III, Section D.

⁵ We make no reductions to the minuscule amount of time that Whiddon spent on the same issue.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No
B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(2)(6))?	No
GPI filed comments on the Proposed Decision on August 16, 2013. GPI's arguments are outlined below	CPUC's Response
GPI objected to the Commission's discussion about the amount of GPI's claim filed in relationship to the amounts requested by other intervenors. GPI states that "although the observation on the part of the Commission does not figure directly into any of the deductions that are made in the PD, it does provide perspective on the tone that underlies the document." ⁶ GPI opines that using this type of language can be highly misleading and does not consider the types of differing participation among intervenors which could account for differences in the amount of compensation it requests.	We have reworded the language initially drafted in the Proposed Decision.
GPI objects to the reduction in hours for its work on the issue of "Creating Targeted Biomass-Fuels Programs." GPI states that even though the Decision did not adopt its recommendations in this area, that its work on this issue helped to constructively broaden and enrich the record upon which the final Commission's Decision was based. In support of this argument, GPI references pages 53-43 in D.12-05-037 and argues that this discussion presents a reasoned, rational response to GPI's arguments and that the Commission pledged to continue to support a biomass program, although not funding it exclusively from EPIC sources. On page 4 of its Comments on the Proposed Decision, GPI states that this discussion would not have been included in D.12-05-037 if not for its work on this issue.	See our discussion on page 5, we have restored some of the hours previously disallowed but reduce by 50% the amount of Morris's 2011-2012 hours spent advocating for this program as it was not adopted by the Commission, and GPI's time allocated to this issue were excessive. In doing so, we cite to GPI's own admission on page 5 of its Comments on the Proposed Decision, that when GPI "perceived that our proposal was encountering resistance, we redoubled our efforts to make the best and most complete case for it that we could, so that if it was ultimately rejected, the decision to reject it would not be the result of an

⁶ Comments of GPI on the Proposed Decision of the ALJ Division at 1, filed on August 16, 2013.

	incomplete case having been made.” ⁷
GPI objects to the 2011 reduction in hours for Morris’s work “reviewing other parties’ comments on the PD and begin reply.” According to GPI, even though the Commission compensated GPI’s other participant Whitton for this same work, that the hours should be compensated because these efforts were complementary rather than duplicative. Moreover, GPI argues that the bulk of the five hours was actually devoted to planning and beginning the writing of GPI’s Reply Comments.	We are not persuaded by GPI’s argument. In addition, we remind GPI that the combining of multiple tasks into one timesheet entry violates practice violates the provisions of Rule 17.4 as wells as the Commission’s decisions setting guidelines for intervenor compensation matters (see, for example, D.98-04-059, at 51). GPI must discontinue this practice in any future claims for compensation it may file.
GPI points out that the Proposed Decision double counts some of the deductions and requests that this error be corrected.	We correct this error.

FINDINGS OF FACT

1. GPI has made a substantial contribution to Decisions (D.) 11-12-035 and D.12-05-037.
2. The requested hourly rates for GPI’s representatives are reasonable and comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
3. GPI’s costs are reasonable and commensurate with the work performed.
4. The total of reasonable contribution is \$35,950.

CONCLUSION OF LAW

1. The Claim, with the adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

⁷ See GPI’s Comments on the Proposed Decision at 3.

ORDER

1. The Green Power Institute is awarded \$35,950.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall pay The Green Power Institute the total award. Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company shall allocate payment responsibility among themselves based on their California-jurisdictional electric revenues for the 2011 calendar year, reflecting the year in which the proceeding was primarily litigated. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning October 4, 2012, the 75th day after the filing of The Green Power Institute's request, and continuing until full payment is made.
3. The comment period for today's decision was not waived.
4. This decision is effective today.

Dated _____, at San Francisco, California.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:		Modifies Decision? No
Contribution Decision(s):	D1112035 and D1205037	
Proceeding:	R1110003	
Author:	ALJ Division	
Payees:	Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Green Power Institute	07-24-12	\$41,687	\$35,950	No	Excessive hours and internal duplication of effort

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Gregory	Morris	Expert	The Green Power Institute	\$240	2011	\$240
Gregory	Morris	Expert	The Green Power Institute	\$240	2012	\$245 ¹
Vennessia	Whiddon	Consultant ²	The Green Power Institute	\$70	2011	\$70
Vennessia	Whiddon	Consultant	The Green Power Institute	\$70	2012	\$70

(END OF APPENDIX)

¹ This rate includes the 2.2% cost-of-living increase authorized for 2012 intervenor work in Resolution ALJ-281.

² Although Whiddon is listed as a consultant by The Green Power Institute, her work here more closely resembles that of a paralegal. Whiddon's timesheets almost exclusively include work on "analyzing and summarizing the comments of other parties."